

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL HICKS,

Plaintiff,

v.

A. LUCAS, et al.,

Defendants.

Case No. 1:20-cv-01721-JLT (PC)

**FINDINGS AND RECOMMENDATIONS
TO DENY PLAINTIFF'S MOTION TO
PROCEED *IN FORMA PAUPERIS***

(Doc. 5)

14-DAY DEADLINE

Clerk of the Court to Assign District Judge

Before the Court is Plaintiff's motion to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (Doc. 5.) The inmate trust account statement attached to the motion indicates that Plaintiff currently has more than \$6,000 in his trust account. (*Id.* at 3.) This is more than enough to pay the filing fee for this action in full. In his motion for an extension of time to pay the filing fee, filed concurrently with his IFP motion, Plaintiff concedes that he has adequate funds to pay the filing fee. (Doc. 4 at 1.)

Proceeding "in forma pauperis is a privilege not a right." *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965). While a party need not be completely destitute to proceed *in forma pauperis*, *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339-40 (1948), "the same even-handed care must be employed to assure that federal funds are not squandered to underwrite, at public expense, either frivolous claims or the remonstrances of a suitor who is financially able, in whole

1 or in material part, to pull his own oar.” *Doe v. Educ. Enrichment Sys.*, No. 15-cv-2628-MMA-
2 MDD, 2015 U.S. Dist. LEXIS 173063, *2 (S.D. Cal. 2015) (quoting *Temple v. Ellerthorpe*, 586
3 F. Supp. 848, 850 (D.R.I. 1984)).

4 Plaintiff has adequate funds to pay the filing fee for this action in full. Accordingly, the
5 Court RECOMMENDS that his motion to proceed *in forma pauperis* (Doc. 5) be DENIED. The
6 Court DIRECTS the Clerk of the Court to assign a district judge to this action.

7 These Findings and Recommendations will be submitted to the United States District
8 Judge assigned to this case, pursuant to 28 U.S.C. § 636(b)(1). **Within 14 days** of the date of
9 service of these Findings and Recommendations, Plaintiff may file written objections with the
10 Court. The document should be captioned, “Objections to Magistrate Judge’s Findings and
11 Recommendations.” Failure to file objections within the specified time may result in waiver of
12 rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*
13 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

14
15 IT IS SO ORDERED.

16 Dated: **January 27, 2021**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE